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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re J.R., a Minor. _____ IRENE R. et al., Petitioners and Respondents, v. JENNA T., Objector and Appellant.	D073894 (Super. Ct. No. EAD00838)

APPEAL from a judgment of the Superior Court of Imperial County, William D. Quan, Judge. Affirmed.

Elizabeth C. Alexander, under appointment by the Court of Appeal, for Objector and Appellant.

Marcus Family Law Center, Ethan Marcus, Erin K. Tomlinson, Case Yousef Kamshad and Christian Johaana Limon for Petitioners and Respondents.

Jenna T. (Mother) appeals a judgment freeing her minor daughter, J.R., from parental custody or control under Family Code section 7822.[1] J.R.'s paternal grandmother and aunt, respondents Irene R. and S.R., filed the section 7822 petition in connection with a request to adopt J.R. Mother contends insufficient evidence supports the findings on the section 7822 petition, and that it was not in J.R.'s best interests to terminate her parental rights. We reject these arguments and affirm.[2]

FACTUAL AND PROCEDURAL BACKGROUND

A. *Placement with Irene and Guardianship Action*

When J.R. was born in January 2016, both she and Mother tested positive for illegal substances. At the time, Mother and Father were living with Irene and S.R. Mother signed a safety plan from Child Welfare Services (CWS) providing that J.R. would stay in Irene's care while the parents became sober and attended parenting classes.[3]

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1 Further statutory references are to the Family Code unless otherwise indicated.

2 J.R.'s father did not oppose the section 7822 petition, and respondents represent he has since passed away.

3 The court and parties refer to Child Protective Services (CPS) and Child Welfare Services (CWS). For simplicity, we use "CWS." We also refer to the superior court as the "trial court," whether the proceedings were in the section 7822 or guardianship action.

On March 11, CWS visited Irene's home. Mother was upset and wanted to leave with J.R. The social worker indicated that was not permissible. Instead, she took Mother to be drug tested and then dropped her off at a friend's home. Irene retained an attorney and filed for temporary guardianship. Mother stayed in hotels for a period, and Irene brought J.R. to see her.

On March 17, CWS brought Mother to Irene's house to pick up belongings. Mother asked to see J.R. and then left with her. The police found J.R. with Mother at House of Hope. CWS declined to remove her. Around March 19, Mother left J.R. with Irene. On March 25, she texted Irene indicating she wanted J.R. back; Irene returned J.R. A couple of days later, she left J.R. with Irene for three hours. On March 29, Mother and J.R. spent the night at Irene's home.

On March 30, CWS removed J.R. to a juvenile receiving home.[4] Mother then signed a consent form at the office of Irene's attorney, allowing Irene to have guardianship of J.R. She also signed another safety plan, and J.R. was released to Irene. The parties provided differing accounts of Mother's efforts to contact J.R. after March 2016. We address those accounts, *post*.

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4 Mother said J.R. was removed because she failed a drug test and had a restraining order against Father; S.R. stated CWS said it was due to the drug test.

The following week the trial court awarded Irene temporary guardianship.[5] One month later, Irene petitioned for guardianship. The court awarded guardianship on June 1, and letters of guardianship issued on June 6.

Toward the end of the year, Mother sent an email to the Access Center, indicating she wanted to seek visitation in the guardianship action. They advised her to see if there were visitation orders and, if not, that she would have to file a pleading. On December 16, Mother filed a petition for visitation.

B. *Section 7822 Proceeding*

One week earlier on December 9, Irene and S.R. filed an adoption request and a petition to declare J.R. free from parental custody and control under section 7822. Mother was served with the petition on January 13, 2017. She obtained counsel and objected to the petition. The trial court stayed the visitation petition pending a ruling on the section 7822 petition.

The court referred the matter to the Department to prepare a report on "the circumstances of the request to declare the minor free from parental custody." In April 2017, social worker Alma Trabanino prepared a report on whether J.R. was "a person described in the Welfare and Institutions Code section 300," which indicated a petition would be filed and recommended reunification services. The court stated it was not the

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5 The court also referred the case to the Department of Social Services (Department) to determine if J.R. was a person described in Welfare and Institutions Code section 300. It found there were "proper and suitable arrangements with the paternal grandmother," and there was no imminent danger.

correct report, and county counsel agreed. In May, Trabanino filed the requested report. She found Irene and S.R. were "able to provide an adequate and nurturing home environment . . . , along with the care and support [J.R.] needs," and "expressed their desire and willingness to continue to provide . . . a suitable home . . . ." She noted Mother "expressed . . . her desire to reunify" and was working "towards maintaining her sobriety and rebuilding her life."

The matter proceeded to an evidentiary hearing, which began with testimony from Trabanino and police officer Deanna Caldwell. Officer Caldwell made contact with Mother at House of Hope after she left with J.R. in March 2016. Mother had paperwork for seeking custody, but it was not signed by a judge and did not have a file stamp. Trabanino spoke with Mother at the sober living home of Eva H. She was working on sobriety, taking parenting classes, and enrolling in anger management classes. Trabanino said Mother had employment when she met with her on "March 23rd, 2017 [¶] . . . [¶] 21st or 23rd." She also said she began participating in programs in "early February." Irene's counsel objected, arguing the events were after the section 7822 petition. Mother's counsel "underst[ood] the time period argument," but maintained they were relevant. He asked if Trabanino discussed with Mother "where she was and what she was doing during the period of July . . . to December of 2016." She admitted she did not.

Next, the parties submitted declarations—their own and from other witnesses—and stipulated the court could consider them. Counsel conducted cross- and redirect-examination at the hearing. We summarize relevant portions.

Irene's declarations indicated she and S.R. were the ones who cared for J.R., and that Mother did not contribute support. She also provided police reports involving Mother. Pertinent here, a January 19, 2017 report quoted Irene as stating that Mother "has been constantly sending her text messages regarding visitation."

Mother filed the visitation petition and an attachment in December 2016, and filed declarations in February and March 2017. In the December documents, she said she signed the guardianship consent "under the agreement" that J.R. would never be kept from her. She indicated that in April 2016, Irene let her visit J.R. and asked if she would consider letting Irene adopt. Mother would not agree, and after that Irene did not allow her to see J.R. Mother described subsequent efforts to see J.R.: an attempted visit in June with her friend Sherri H., when Mother brought a gift; another attempt in June; once in August; and on two other days (the first of which she was able to see J.R. in the yard). She also stated they would not answer her calls. In the February and March declarations, Mother again described attempted visits. She now indicated the adoption conversation was in May, and identified an attempt nearly every month. Irene filed declarations in response. She indicated her attorney "offered to explain to [Mother] what she was signing" in the consent, but she declined. She also denied Mother provided gifts or clothes, and disputed or otherwise addressed the claimed visits.[6]

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[6] We summarize their accounts. Mother said she tried to visit in April and Irene said J.R. was asleep. Irene said she arrived at 11:00 p.m., and she let her see J.R. from a distance. Mother stated she and Irene were in contact over text in June, but Irene did not permit visits. She further stated she and Sherri H. brought a gift and clothes in July; there

Witnesses Sherri H. and Sherri M. provided declarations. Sherri H. said she accompanied Mother to Irene's house with gifts for J.R., but they "walk[ed] away . . . ignored . . . ." Sherri M. stated she took Mother to see J.R. in April 2016, and no one would answer the door. She further stated that in May 2016, she met Mother at Irene's house, where Mother talked to Irene and then told Sherri M. she was not allowed to see J.R.

Finally, Mother's February and March 2017 declarations also addressed her efforts to regain custody. In the February declaration, Mother stated she was participating in SMART recovery, attending anger management classes, and would begin parenting classes; had secured temporary employment; and had a residence. In March, she indicated she had another part-time position, was seeking full-time work, and had a different residence (citing the declaration of Eva H.).

At the hearing, Mother's counsel asked Irene about what CWS told her. She testified, in part, that CWS said Mother could not visit when they removed J.R. When

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was no response; and she was later able to leave the items, but Irene said CWS would remove J.R. if Mother was there. She said Irene repeated this claim in August. Irene said she told Mother she could not see J.R. because she was under the influence of drugs. Mother stated that in September, the door went unanswered and in October, Irene "was outside watering the lawn . . . went inside . . . and did not answer the door." Irene did not recall a visit in September and disputed one in October, noting she does not have a lawn. Mother said in November, she was able to see J.R. outside, but she returned the next day to visit and Irene refused. Irene agreed Mother saw J.R. from a distance, but denied she came back. She said Mother did return on November 26, banging on windows and shouting; she called the police; and Mother left. Mother said she tried to visit on Christmas, but Irene said they were not home. As for unanswered calls, Irene explained Mother failed to tell the court why the calls were not answered," noting she had "stolen" J.R. and "[a]t that time . . . tested positive for drugs again."

asked if she later called CWS to see if Mother could visit J.R., she said no. Irene initially agreed that after June 2016, Mother "continued to . . . ask for visits," and later said she "started to ask for visitations" after finding out Irene was petitioning. She indicated Mother requested visits three or four times. Irene recalled the adoption discussion in May. She also addressed the police report statement that Mother was "constantly texting [her] requesting visits," explaining she meant multiple texts on one day. She testified that after J.R.'s removal, Mother texted her "two or three [times] the most."

S.R. indicated CWS did not require Mother to consent to guardianship for J.R. to be released. She testified CWS "told [Mother] that she had the legal right to withdraw" the consent, and they could "work with [her] . . . to reunify with [J.R.] . . . ." With respect to visits, S.R. stated she quit her job after J.R. was born, was usually at home, and the only time between April 2016 and November 2016 that Mother came to the house was on November 26, when she admitted to being under the influence of drugs. She said the adoption discussion must have been before the first week of May, when the parents totaled Irene's car. On further examination, Irene agreed and testified it was in April.

Mother testified about the custody paperwork. She believed she filed it, but did not have a case number and did not remember if she sought to have anyone served. As for her visitation petition, Mother testified she started to research the issue "sometime between summer, going into the fall," but found visits were at the guardian's discretion. She later discovered there might be another option, which led her to email the Access Center. She too addressed the adoption discussion, stating S.R.'s testimony jogged her memory, and recalled it was "around May or the beginning of June," after the car wreck.

Finally, Sherri H. and Sherri M. testified about the visits during which they accompanied Mother. Sherri H. indicated she went with Mother in early summer, and they brought a toy giraffe from Mother and a bracelet from Sherri.

The trial court heard argument and took the matter under submission. In March 2018, it issued a statement of decision.

The court began by setting forth its factual findings. It did not deem credible Mother's testimony that she commenced or pursued a parentage action. The court found Mother signed a consent for Irene to have guardianship of J.R. It noted Irene's attorney "attempted to explain [its] consequences . . . , but she declined any explanation." It further noted CWS "explained to [Mother] that she had the legal right to withdraw the consent . . . which [she] did not do." The court then determined that in "April, or at least no later than May," Irene indicated she wanted to adopt J.R., but Mother "took no action to withdraw her consent"; did not object when guardianship was granted; and took no steps to seek termination.

Between the consent and the guardianship petition on May 6, the court believed Mother "may have had up to three visits . . . ." It stated that once letters of guardianship issued, Mother "had no contact with [J.R.] other than perhaps to view her once from a distance outside [Irene's] home." It further determined "there was definitely no contact . . . after the first week of May," when Mother totaled Irene's car, and the last time Mother saw J.R. "was likely in mid-April 2016." The court acknowledged that Mother indicated she attempted to visit J.R. "approximately once per month . . . ." But although it thought Sherri M. and Sherri H. were credible, it did not believe Mother's testimony

regarding other alleged attempts. It also found credible S.R.'s testimony that from April to November 26, she did not see Mother at the house. Finally, the court determined that Mother took no legal action to establish visitation until after Irene's petition.

The trial court then set forth its legal findings. As discussed *post*, section 7822 applies when a parent leaves a child for six months without support or communication, and with intent to abandon the child. (§ 7822, subd. (a)(2).) The court noted that the purpose of section 7800 was " 'to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life.' "

First, the court found by clear and convincing evidence that Mother "left [J.R.] with [Irene] and [S.R.] and . . . did voluntarily abandon her parental role." It found Mother voluntarily relinquished her parental role in multiple ways: when J.R. was released to Irene under a safety plan Mother executed; when Mother left Irene's home, with J.R. in Irene's care; when she returned J.R. to Irene's care at multiple points; when she consented to the guardianship; and when she failed to withdraw consent or oppose guardianship.

As for the six-month period, the trial court found "the evidence clearly showed that [J.R.] was in [Irene] and [S.R.]'s care for the requisite period of time all the way up to the filing of the petition." The court found Mother "abdicated [her] parental role[] . . . as early as [J.R.'s] . . . birth, and at the latest March 30, 2016[,]the date of execution of the Consent to Guardianship . . . ." It further found Irene and S.R. had

"car[ed] for [J.R.] since birth . . . with only brief discontinuities in March of 2016, and continuously since March 31, 2016."

Next, the court addressed support, communication, and intent to abandon. It found Mother did not provide any support for J.R. Regarding whether Mother left gifts and clothing, the court stated: "Such attempts and as few in number as there are, the court deems and finds these to merely be 'token' efforts . . . ." The court also determined that Mother did not have "communication with [J.R.] for the entire period from at least early May of 2016 to the filing of the petition." It found no credible evidence that Irene or S.R. took steps to deny access. The court cited section 7822, subdivision (b), which states that failure to support or to communicate is "presumptive evidence of the intent to abandon." It went on to find by clear and convincing evidence that Mother "failed to provide support, and failed to communicate with [J.R.] for at least six months prior to the filing of the petition." The court also concluded that "all of [Mother's] actions" regarding regaining custody, including residing in a sober living home, "were taken after the filing of the instant petition."

Finally, the court determined that Mother "failed to produce sufficient evidence [to] rebut the presumption of intent to abandon . . . by a preponderance of the evidence." It rejected her argument that she was forced to give up her parental role, noting that had she "opted . . . to proceed through the juvenile system, she would have been offered services and reunification" and she did not choose that option.

In April 2018, the trial court issued its order declaring J.R. free from parental custody and control.

DISCUSSION

A. *Legal Principles*

"Section 7800 et seq. governs proceedings to have a child declared free from a parent's custody and control." (*Adoption of Allison C.* (2008) 164 Cal.App.4th 1004, 1009 (*Allison C.*).) The statute is "liberally construed to serve and protect the interests and welfare of the child." (§ 7801.)

A court "may declare a child free from a parent's custody and control if the parent has abandoned the child." (*Allison C., supra*, 164 Cal.App.4th at p. 1010.) Under section 7822, abandonment occurs when a child (1) is "left" with someone by the custodial parent(s), (2) without provision for support *or* communication for the statutory period, and (3) all acts are done with intent to abandon. (*Ibid*.) "The failure to provide identification, failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents." (§ 7822, subd. (b).) And specifically with reference to this case, even if a guardian has been appointed for the child, "the court may still declare the child abandoned if the parent or parents have failed to communicate with or support the child within the meaning of this section." (*Ibid*.)

The issue of abandonment generally, and the parent's intent specifically, " 'are questions of fact for the resolution of the trial court.' " (*In re Marriage of Jill & Victor D.* (2010) 185 Cal.App.4th 491, 506 (*Jill & Victor D.*), quoting *In re Adoption of Oukes* (1971) 14 Cal.3d 459, 466.) The trial court must make these factual findings based on

clear and convincing evidence. (§ 7821.) On appeal, we apply substantial evidence review. (*Allison C., supra*, 164 Cal.App.4th at p. 1010.) " ' "All conflicts in the evidence must be resolved in favor of the respondents and all legitimate and reasonable inferences must be indulged in to uphold the judgment." ' " (*Id.* at pp. 1010-1011.)

B. *Analysis*

1. *Mother Left J.R. in Irene's Custody for Purposes of Section 7822*

A parent "leaves" a child within the meaning of section 7822 by voluntarily surrendering him or her to the care and custody of another person. (*In re Amy A.* (2005) 132 Cal.App.4th 63, 69 (*Amy A.*).) Here, substantial evidence supports the trial court's finding that Mother voluntarily surrendered J.R. to Irene's care and custody by, among other things, consenting to the guardianship.

Mother contends she did not leave J.R., because her consent was not a "leaving," but a "taking by judicial decree." She appears to draw this argument from *In re Jacklyn F.* (2003) 114 Cal.App.4th 747 (*Jacklyn F.*), which she claims is very similar to this case. There, grandparents filed for guardianship when the minor was only in their care for three days. (*Id.* at p. 756.) The mother opposed the guardianship and, after it was granted, sent " 'stacks' " of letters. (*Ibid.*) The trial court granted the grandparents' section 7822 petition, but the Court of Appeal reversed. It explained that once the guardianship was granted, custody "became a matter of judicial decree, not abandonment" and mother's conduct thereafter "did not constitute 'parental nonaction' amounting to a leaving." (*Ibid.*) However, the court acknowledged that "under different circumstances, it might be proper

to conclude that a parent has 'left' a child within the meaning of section 7822 despite court intervention . . . ." (*Ibid.*)

This matter involves very different circumstances from *Jacklyn F.* Unlike the parent there who opposed guardianship from the start, Mother here actually consented to guardianship—and then failed to withdraw her consent or seek its termination despite her complaints that her efforts to maintain contact were being frustrated. Although she eventually sought visitation, she waited nine months to do so. Indeed, the statute specifically contemplates that abandonment can occur in the context of guardianship. (§ 7822, subd. (b) [where guardian is appointed, "court may still declare the child abandoned if the parent . . . ha[s] failed to communicate with or support the child"].) Thus in *Amy A.*, this court rejected a similar effort to rely on *Jacklyn F.* by a father who did not try to modify a custody order or function as a parent. (*Amy A.*, *supra*, 132 Cal.App.4th at p. 70 [mother's custody award did not preclude a leaving; father did not appear at divorce proceedings, did not attempt to modify custody order or exercise visitation rights in the order, and did not provide care or have parental relationship].)

We are likewise unpersuaded by Mother's other arguments. She contends she did not "leave" J.R. with Irene, but rather "sought custody of her daughter in March 2016 . . . ." Yet Officer Caldwell testified the paperwork was not signed by a judge or file-stamped, and the court did not find credible Mother's claim that she filed or pursued the action.

Mother also contends she signed the guardianship consent "under the agreement [J.R.] would never be kept from her" and suggests she was "under duress," due to the

involvement of CWS. But S.R. testified no such agreement was made, and Mother declined an offer to explain the guardianship. As for CWS, it was Mother's drug use that led to involvement of the department and Irene's care of J.R. In any event, Mother was given the chance to withdraw her consent and she declined.[7]

2. *The Evidence Supported a Finding of Abandonment*

As we see it, the real question in this case is not whether Mother "left" her daughter with Irene, but rather whether substantial evidence supported a finding that she failed to support or communicate with J.R. during the requisite six-month period with the intent to abandon her. (§ 7822, subd. (a)(2).)

We begin by addressing the six-month period. Mother contends "the court believed the requisite time frame only needed to be six months, not continuous." She also contends its ruling was "conclusory," asking "[w]hen did the requisite six-month period start?" It is true the court initially expressed a recollection that the period did not need to be continuous, but counsel corrected the court and the court agreed. As for the commencement date, although the court noted that Mother abdicated her parental role as early as J.R.'s birth, it specifically found she abandoned that role no later than March 30, 2016, and that Irene and S.R. cared for J.R. "continuously since March 31, 2016." Thus, more than six months elapsed by the time the petition was filed on December 9, 2016.

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[7] Mother raises additional points on reply, including that she did "attempt[] to revoke her consent" (without record citations) and that S.R.'s testimony about CWS's advisement she could withdraw consent was hearsay (without establishing an objection was made). We need not consider arguments raised for the first time on reply (*In re A.R.* (2018) 24 Cal.App.5th 1076, 1084, fn. 5), and these would not be persuasive, regardless.

We now turn to support, communication, and Mother's alleged intent to abandon. Section 7822 is written in the disjunctive, so a court may declare a child abandoned if the parent has failed to support or communicate with the child. (See § 7822, subd. (a)(2) [child is left "without any provision for . . . support, or without communication]; § 7822, subd. (b) ["failure to provide support, or failure to communicate is presumptive evidence of the intent to abandon"].) Here, Mother does not dispute she failed to support J.R., *and* there is substantial evidence that she engaged in only token communications. (See *Allison C., supra*, 164 Cal.App.4th at p. 1013 [father's failure to communicate with child coupled with nonsupport sufficient to show intent to abandon].)

The trial court's role was to evaluate the conflicting accounts regarding Mother's efforts to maintain contact with J.R., within the factual context of the case, and it did so. (*Jill & Victor D., supra*, 185 Cal.App.4th at p. 507 [viewing efforts in context]; *Allison C., supra*, 164 Cal.App.4th at p. 1016 [intent to abandon is determined based on all facts and circumstances].) Mother claims she made "continuous attempts" to see J.R., but only identified around one attempt per month in her declarations. Further, although her witnesses corroborated some attempted visits in summer, the court specifically did not find her testimony regarding other attempts credible (and did find credible S.R.'s testimony that she did not see Mother between April and late November). (*Allison C.*, at p. 1015, fn. 9 ["witness credibility is in the province of the trial court"].) The court also found no evidence that Irene and S.R. blocked access. Irene disputed that certain attempts took place, testified Mother made only three or four requests to see J.R., and suggested why visits did not occur (including CWS's advisement to not permit visits and

concerns regarding Mother's drug use). Finally, the court found that Mother only petitioned for visitation after the relevant statutory period, which she does not dispute.[8] In sum, the court properly evaluated the evidence, and could reasonably conclude Mother engaged in only token efforts.

Mother's other arguments do not compel a different result. First, she maintains Irene thwarted her efforts to see J.R., citing her purported admission that "she did not answer [Mother's] calls," her receipt of texts from Mother (including those noted in the January 2017 police report), and her failure to ask CWS about visitation. None of this establishes that Irene was the reason Mother was not in contact with J.R. It was Mother's recurring drug use that led to Irene caring for J.R. Irene addressed why she declined calls (i.e., Mother's taking of J.R. and failing a drug test). She also explained that the texts noted in January occurred on one day, and elsewhere stated that Mother texted a total of two to three times. The court could reasonably conclude that declining calls for a reason, receiving a number of texts, and failing to ask CWS about visitation is not "thwarting" visitation.[9]

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[8] Mother does contend she petitioned for visitation while unaware of the section 7822 petition. The issue was when she filed, not her motivation.

[9] Mother seeks to excuse her limited efforts by pointing out that "[s]ince [J.R.] is a baby, [her] efforts to communicate involve holding, feeding, talking, changing diapers and all other activities of a parent of such a young child." But she does not explain why she did not pursue other means to obtain contact with her daughter, such as seeking to terminate the guardianship or petitioning for visitation sooner.

Second, Mother contends she "want[ed] to work with social services" to reunify with J.R.; CWS recommended a Welfare and Institutions Code section 300 petition and reunification services; and she was in a sober living home and services, citing Alma Trabanino's testimony. The record does not support these arguments. CWS advised Mother she could withdraw her consent to guardianship and proceed toward reunification, but she declined to do so. Mother's contention that CWS recommended a section 300 petition and reunification services is based on the erroneous April 2017 report. Further, county counsel noted at ahearing that the guardianship was stable, meaning there was no reason for a section 300 petition. For similar reasons, we reject Mother's contention that the record is silent on the lack of such petition. As for her residence and services, Trabanino's testimony reflects she was discussing Mother's situation in *2017*, not 2016. Mother's efforts are commendable, but they are not relevant to whether she intended to abandon J.R.[10]

Third, Mother argues she never intended to entirely sever her relationship with J.R., citing *In re Brittany H.* (1998) 198 Cal.App.3d 533. (*Id.* at p. 549 [abandonment requires " ' "actual desertion" ' " with intent " ' "to entirely sever . . . the parental

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10 Mother notes she was at House of Hope, which the record reflects was in March 2016, but she cites no evidence establishing how long she stayed or what services she participated in. On reply, she acknowledges the April 2017 report was in error and that Trabanino was testifying about what happened in 2017, but maintains that her participation in services combined with her filing of a petition for visitation *before* notice of the section 7822 petition demonstrate that she did not abandon J.R. Again, however, the question is not whether the facts might reasonably support a different conclusion, but rather if the evidence rationally supports the decision made by the trial court.

relation" ' "], italics omitted.) However, more recent authorities, including from this court, make clear the intent need not be permanent. (*Adoption of A.B.* (2016) 2 Cal.App.5th 912, 923 (*A.B.*) ["There is no requirement that a parent intend to abandon the child permanently]; *ibid*. ["Although [father] may not have intended to abandon A.B. permanently and his efforts toward self-improvement were admirable, the law does not require that A.B.'s life be kept in limbo based on such circumstances."]; see also *Allison C., supra*, 164 Cal.App.4th at pp. 1014-1016 [permanent intent not required].)

Attempting to distinguish *Allison C., supra,* 164 Cal.App.4th 1004, Mother asserts she did not "voluntarily abdicate" her parental role. To the contrary, however, *Allison C.* is instructive. There, the father committed domestic violence against the mother and was incarcerated for over a year. (*Id.* at p. 1007.) The trial court granted the stepfather's section 7822 petition, and the Court of Appeal affirmed. (*Id.* at p. 1017.) The court concluded that father "voluntarily abdicated the parental role," explaining the "actions underlying his incarcerations . . . were voluntary" and even after leaving prison, he did not seek custody or visitation. (*Id.* at p. 1012.) Similarly here, the evidence supports a conclusion that Mother abdicated her parental role as a result of her substance abuse, which led to Irene having care of J.R., and then by consenting to guardianship and only belatedly seeking visitation.

Finally, the trial court reasonably found Mother did not rebut the presumption that she intended to abandon J.R. (§ 7822, subd. (b).) It did not find credible her testimony that she pursued a custody action, made all of the claimed attempts to contact J.R., or was prevented from doing so by Irene. It also found she declined the opportunity to proceed

through the dependency system. Rather, the court determined and the evidence reflects that Mother made only token efforts at communication, which do not defeat the statutory presumption. (§ 7822, subd. (b); see *A.B., supra*, 2 Cal.App.5th at p. 923 [token efforts will not rebut presumption].) There also remains no dispute Mother did not support J.R.

Ultimately, the court was not compelled to credit Mother's stated desire to be active in J.R.'s life when her conduct supported a contrary inference. (See *Jill & Victor D., supra*, 185 Cal.App.4th at p. 506 ["the trial court was not required to believe father's testimony regarding his intent and, in light of the other evidence, father's testimony did not overcome the presumption of abandonment."].) Substantial evidence supports its finding of abandonment.

3. *Best Interests*

Finally, we address Mother's contention that terminating her parental rights was not in J.R.'s best interest.

As the trial court noted, the purpose of section 7800 proceedings is "to serve the welfare and best interest of a child by providing the stability and security of an adoptive home when those conditions are otherwise missing from the child's life." (§ 7800.) The court could reasonably determine that freeing J.R. from Mother's custody would provide stability and security that otherwise would be missing. Irene and S.R. had cared for J.R. from birth, except for brief periods in March 2016, and provided all of her support. Social worker Trabanino concluded that they gave J.R. a "nurturing home environment" and "the care and support" she needed, and had "expressed their desire and willingness" to continue to provide" a home, care, and support. Further, Irene and S.R. already

requested adoption. In contrast, Mother was using drugs when J.R. was born, and there is evidence she continued to do so afterwards, including the failed drug test that led to J.R.'s removal in March 2016. Although Mother later began services, obtained employment, and was residing in a sober living home, relapse and a return to an unstable living situation remained a real possibility. Her commendable progress does not establish that Mother was capable of providing a stable and secure home for J.R.

Mother understandably questions "why it was so compelling to terminate [Mother's] parental rights," given that "[e]arly on, the evidence showed that [she] was involved in services and wished to resume a parental role." This is not a question that admits of any easy answer. There is no dispute that the natural parental relationship is important, but so too are the paramount best interests of the child. Substance abuse is a type of mental disorder, yet children are entitled to a secure and stable home environment. The issue in this case was whether freeing J.R. from parental custody would provide the best chance for assuring the stability and security she was missing. As is most often the case, all the facts did not point unerringly in a single direction, and we must rely on thoughtful trial judges to sift the conflicting evidence. We cannot say that the court's conclusion on the facts of this case was unreasonable. (See *A.B., supra*, 2 Cal.App.5th at p. 924 [keeping minor in limbo "would not be consistent with the legislative purpose of providing abandoned children with the stability and security of an adoptive home . . . ."].)

DISPOSITION

The judgment is affirmed.

DATO, J.

WE CONCUR:

AARON, Acting P. J.

GUERRERO, J.